



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ZAUDERER *et al.*

Appl. No. 09/824,787

Filed: April 4, 2001

For: **Gene Differentially Expressed in
Breast and Bladder Cancer, and
Encoded Polypeptides**

Confirmation No. 2970

Art Unit: 1642

Examiner: Harris, Alana M.

Atty. Docket: 1821.0040001/EKS/TJS

RECEIVED

JUL 25 2002

Reply to Restriction Requirement

TECH CENTER 1600/290

Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated April 22, 2002, requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby provisionally elect to prosecute the invention of Group II, represented by claims 11, 12, 16, 23, 25, 28 and 29. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicants reserve the right to pursue the nonelected claims in one or more divisional applications.

The election is made with traverse. Applicants respectfully disagree with the restriction of the claims to *eleven* separate groups. Groups I, VII, and XI are related as I is directed to an isolated C35 nucleic acid molecule while VII relates to the determination of mutations in such polynucleotides and XI relates to a method for generating antibodies by use of a vector encoding the polynucleotide. Likewise, Groups II, VIII, IX and X are related as II is directed to an isolated C35 polypeptide, VIII is directed to a method of diagnosing by determining the presence or amount of the C35

polypeptide, IX is directed to a method for identifying a binding partner to C35 polypeptide, and X is directed to a method for assaying for C35 polypeptide activity.

Even assuming, for the sake of argument, that Groups I-XI represent distinct or independent inventions, Applicants submit that the search and examination of, at a minimum, Group I together with Groups VII and XI, and Group II together with Groups VIII, IX, and X would not impose a serious burden on the examiner. In particular, any art related to nucleotides encoding the C35 polypeptides is very likely to overlap substantially with art related to mutations in said polynucleotides and art related to antibodies to said polynucleotides. Similarly, art related to C35 polypeptides is very likely to overlap substantially with art related to methods of diagnosis utilizing C35 polypeptides and art related to C35 binding partners and methods for assaying for C35 polypeptide activity. Accordingly, it would not be an undue burden for the Examiner to search, at a minimum, Groups I, VII, and XI together and Groups II, VIII, IX, and X together.

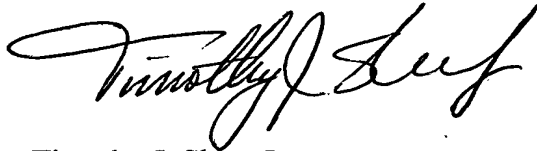
Accordingly, reconsideration and withdrawal, or at a minimum reformulation, of the Restriction Requirement and prompt allowance of all pending claims are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such

extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Timothy J. Shea, Jr.
Attorney for Applicants
Registration No. 41,306

Date: July 22, 2002

1100 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005-3934
(202) 371-2600